

Filed for intro on 02/02/2000
SENATE BILL 2833 By
Dixon

HOUSE BILL 2856
By Bowers

AN ACT to amend Tennessee Code Annotated, Title 56, Chapter 32, relative to the "Patients Bill of Rights for Managed Care."

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 56, Chapter 32, is amended by adding
Section 2 of this act as a new part.

SECTION 2.

(a) A health maintenance organization, as defined in this chapter, or insurance carrier providing a managed care plan, has the duty to exercise ordinary care when making health care treatment decisions and is liable for damages for harm to an insured or enrollee proximately caused by its failure to exercise such ordinary care.

(b) A health maintenance organization, or insurance carrier providing a managed care plan, is also liable for damages for harm to an insured or enrollee proximately caused by the health care treatment decisions made by its:

- (1) employees;
- (2) agents;
- (3) ostensible agents; or

(4) representatives who are acting on its behalf and over, who it has the right to exercise influence or control, which result in the failure to exercise ordinary care.

(c) It shall be a defense to any action asserted against a health maintenance organization , or insurance carrier, providing a managed care plan that:

(1) neither the entity, nor any employee, agent, ostensible agent, or representative for whose conduct such entity is liable under subsection (b), controlled, influenced, or participated in the health care treatment decision; and

(2) the entity did not deny or delay payment for any treatment prescribed or recommended by a provider to the insured or enrollee.

(d) The standards in subsections (a) and (b) create no obligation on the part of the entity to provide to an insured or enrollee treatment, which is not covered by the health care plan of the entity.

(e) This chapter does not create liability on the part of an employer or an employer group purchasing organization that purchases coverage or assumes risk on behalf of its employees.

(f) An entity under this section may not remove a physician or health care provider from its plan, or refuse to renew the physician or health care provider, with its plan for advocating on behalf of an enrollee for appropriate and medically necessary health care for the enrollee.

(g) An entity under this section may not enter into a contract with a physician, hospital, or other health care provider, or pharmaceutical company, which includes an indemnification or hold harmless clause for the acts or conduct of the covered entity. Any such indemnification, or hold harmless clause, in an existing contract is hereby declared void.

(h) Nothing in any law of this state prohibiting a covered entity from practicing medicine, or being licensed to practice medicine, may be asserted as a defense by such entity in an action brought against it, pursuant to this section or any other law.

(i) In an action against a covered entity, a finding that a physician, or other health care provider is an employee, agent, ostensible agent, or representative of such entity, shall not be based solely on proof that such person's name appears in a listing of approved physicians, or health care providers, made available to insureds or enrollees under a health care plan.

(j) This chapter does not apply to workers' compensation insurance coverage under Title 50, Chapter 6, nor to the TennCare program under Title 71, Chapter 5.

SECTION 3. This act shall take effect upon becoming a law, the public welfare requiring

it.